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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,  
8 ex. rel., SCHROEDER,

9 Plaintiff,

10 v.

11 CH2M HILL,d/b/a CH2M HILL  
12 HANFORD GROUP,

13 Defendant.  
14

No. CV-09-5038-LRS

**ORDER GRANTING  
MOTION TO DISMISS**

15 **BEFORE THE COURT** is the United States' Motion To Dismiss Relator  
16 Pursuant To 31 U.S.C. §3730(d)(3) (ECF No. 24). This motion was heard with  
17 telephonic oral argument on May 2, 2013. Daniel H. Fruchter, Esq., argued on  
18 behalf of the United States. Jackson Schmidt, Esq., argued on behalf of the  
19 Relator, Carl Schroeder.

20 31 U.S.C. §3730(d)(3) of the False Claims Act (FCA) provides:

21 Whether or not the Government proceeds with the action, if  
22 the court finds that the action was brought by a person who  
23 planned and initiated the violation of section 3729 upon which  
24 the action was brought, then the court may, to the extent the  
25 court considers appropriate, reduce the share of the proceeds  
26 of the action which the person would otherwise receive under  
27 paragraphs (1) or (2) of this subsection, taking into account  
28 the role of that person in advancing the case to litigation and  
any relevant circumstances pertaining to the violation. **If  
the person bringing the action is convicted of criminal conduct  
arising from his or her role in the violation of section 3729,  
that person shall be dismissed from the civil action and shall  
not receive any share of the proceeds of the action. Such  
dismissal shall not prejudice the right of the United States**

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1 **to continue the action, represented by the Department of**  
 2 **Justice.**

3 (Emphasis added).

4 Mr. Schroeder has been convicted of criminal conduct arising from his role  
 5 in the violation of 31 U.S.C. §3729 that is the basis of the *qui tam* action he  
 6 commenced with the filing of his complaint in June 2009. (ECF No. 1). On  
 7 November 3, 2011, he pled guilty to an Information charging him with  
 8 “Conspiracy to Defraud the Government with Respect To Claims, in violation of  
 9 18 U.S.C. Section 286.” (Plea Agreement, ECF No. 12 to CR-11-6067-LRS). He  
 10 is awaiting sentencing, scheduled for October 17, 2013.

11 §3730(d)(3) is not ambiguous. Its plain language requires dismissal from  
 12 the action of a person who has been convicted of criminal conduct arising from his  
 13 role in the violation of §3729 that is the basis of his *qui tam* action. Its plain  
 14 language mandates he not receive any share of the proceeds of the action. “[W]hen  
 15 the statute’s language is plain, the sole function of the courts- at least where the  
 16 disposition required by the text is not absurd- is to enforce it according to its  
 17 terms.” *Hartford Underwriters Insurance Co. v. Union Planters Bank, N.A.*, 530  
 18 U.S. 1, 6, 120 S.Ct. 1942 (2000). In *Hartford*, the U.S. Supreme Court reiterated  
 19 what it had previously said in *Connecticut National Bank v. Germain*, 503 U.S.  
 20 249, 253-54, 112 S.Ct. 1146 (1992):

21 [I]n interpreting a statute a court should always turn first to  
 22 one, cardinal canon before all others. We have stated time and  
 23 again that courts must presume that a legislature says in a statute  
 24 what it means and means in a statute what it says there. [Citations  
 25 omitted]. When the words of a statute are unambiguous, then,  
 26 this first canon is also the last: “judicial inquiry is complete.”  
 27 [Citation omitted].

28 Furthermore, “[i]n ascertaining the plain meaning of [a] statute, the court must look  
 to the particular statutory language at issue, as well as the language and the design  
 of the statute as a whole.” *McCarthy v. Bronson*, 500 U.S. 136, 139, 111 S.Ct.

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1 1737 (1991).

2 Dismissing Mr. Schroeder and precluding him from receiving a share of the  
3 proceeds of this action is not an absurd result and is consistent with §3730 as a  
4 whole. A person who has not been convicted of criminal conduct arising from his  
5 role in the violation of §3729 receives a percentage of the proceeds as set forth in  
6 §3730(d)(1) or (2), but if he “planned and initiated” the violation, the court may  
7 reduce that percentage as it deems appropriate. On the other hand, a person who  
8 has been convicted of criminal conduct arising from his role in the violation of  
9 §3729, regardless of whether he “planned and initiated” the violation, is precluded  
10 from any share of the proceeds.

11 31 U.S.C. §3730(d)(3) was added to the False Claims Act in 1988 as part of  
12 the Major Fraud Act. Since then, it appears there has not been a single case where  
13 a court has awarded a share of the proceeds to a person bringing the action who has  
14 been convicted of criminal conduct arising from his role in the violation of §3729.  
15 Instead, courts have consistently recognized that §3730(d)(3) means precisely what  
16 it says. *U.S. ex rel. Chandler v. Cook County, Ill.*, 277 F.3d 969, 976 (7<sup>th</sup> Cir.  
17 2002)(“If the relator himself planned or was guilty of violations of the FCA, the  
18 court may dismiss his suit”); *U.S. ex rel. Taxpayers Against Fraud v. General Elec.*  
19 *Co.*, 41 F.3d 1032, 1035 (6<sup>th</sup> Cir. 1994)(“[i]f the relator ‘planned and initiated’ the  
20 fraud, the court may substantially reduce the award, but should also consider the  
21 ‘role of that person in advancing the case to litigation;’ however, a relator  
22 convicted of criminal conduct relating to the fraud cannot collect”); *U.S. v.*  
23 *Northrop Corp.*, 5 F.3d 407, 408 n. 1 (9<sup>th</sup> Cir. 1993); *U.S. ex rel Green v. Service*  
24 *Contract Educ. and Training Trust Fund*, 843 F.Supp.2d 20, 28 n. 6 (D.D.C.  
25 2012)(A *qui tam* suit is barred “[i]f the person bringing the action is convicted of  
26 criminal conduct arising from his or her role in the violation of section 3729,” but  
27 defendant’s criminal conduct did not relate to the FCA violations he alleged); *Kahn*  
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1 *v. The Money Store Inv. Corp.*, 2003 WL 22427749 at \*2 (N.D. Tex. 2003)  
2 (“Plaintiff concedes that he was convicted of criminal conduct relating to the claim  
3 raised in his complaint” and “[c]onsequently, he is precluded from bringing this  
4 action under the FCA” and therefore, magistrate judge recommended that  
5 Plaintiff’s complaint be summarily dismissed).<sup>1</sup>

6 Although Mr. Schroeder may not have “planned and initiated” the violation,  
7 his culpability for the time card fraud at issue is not insignificant. His knowledge  
8 of the fraud goes back to 2002. In the section of his Plea Agreement setting forth  
9 the factual basis for his guilty plea, it states: “Upon first starting to work for  
10 CH2M Hill at the Tank Farms in January of 2002, CARL SCHROEDER learned of  
11 the time card fraud scheme and conspiracy. Specifically, it was accepted practice  
12 at CH2M Hill to claim more hours on a time card than were actually worked.” As  
13 set forth in his Plea Agreement, he participated in the fraud for over four years  
14 (May 2004 to October 2008).

15 The record indicates Mr. Schroeder did not approach investigators on his  
16 own initiative. Instead, the Department of Energy (DOE) Office of Inspector  
17 General (OIG) approached Mr. Schroeder as part of an investigation it commenced  
18 following receipt in 2008 of an anonymous complaint. Mr. Schroeder was not the  
19 source of the anonymous complaint. During interviews with DOE OIG in  
20 December 2008 and January 2009, Mr. Schroeder revealed his participation in the  
21 time card fraud. In May 2009, DOE OIG formally referred its investigation to the  
22 U.S. Attorney’s Office for the Eastern District of Washington. The referral  
23 specifically named Mr. Schroeder as an individual who had engaged in fraud. Mr.  
24 Schroeder subsequently filed his 31 U.S.C. §3729 *qui tam* action on June 1, 2009,

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26 <sup>1</sup>This recommendation was subsequently adopted by a district judge. 2003  
27 WL 22660453 (N.D. Tex. 2003).

1 a number of months after he had already admitted his wrongdoing to DOE OIG. In  
2 August 2009, he was interviewed by DOE OIG and counsel for the Government.  
3 Prior to this interview, he was read his *Miranda* rights and notified of the pending  
4 criminal investigation into conduct that was the subject of his *qui tam* complaint.  
5 Not long after an Information was filed against him on September 28, 2011, he  
6 pled guilty on November 3, 2011 to conspiracy to commit fraud.

7 Mr. Schroeder did not have to plead guilty. With the assistance of counsel,  
8 he knowingly and voluntarily pled guilty. He knew or should have known of the  
9 implications this would have for his ability to recover a share of the proceeds in his  
10 *qui tam* action. He reached a plea deal with the Government which appears very  
11 favorable to him. It allows him an opportunity to provide “substantial assistance”  
12 and if he does so, the Government will move for a downward departure at the time  
13 of sentencing. (See Plea Agreement at Paragraph 10). Furthermore, the Plea  
14 Agreement (Paragraph 13) provides for a \$50,000 “Criminal Fine in lieu of  
15 Restitution.” The court has to believe that if Mr. Schroeder were ordered to pay  
16 restitution for his time card fraud over four and half years, it would likely exceed  
17 \$50,000, and perhaps significantly so.

18 The United States’ motion (ECF No. 24) is **GRANTED**. Relator Carl  
19 Schroeder is **DISMISSED** from this action and shall not receive any share of the  
20 proceeds of this action. This result is required by virtue of the plain language of 31  
21 U.S.C. §3730(d)(3). It an equitable result as matter of law, as well as because of  
22 the particular factual circumstances set forth herein.<sup>2</sup>

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25 <sup>2</sup> It is noted that if Mr. Schroeder were not subject to the prohibition in  
26 §3730(d)(3) and not considered to have “planned and initiated” the violation, he  
27 would stand to receive a multimillion dollar recovery pursuant to §3730(d)(1).  
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**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order and provide copies of it to counsel of record.

**DATED** this 13th day of May, 2013.

*s/Lonny R. Suko*

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LONNY R. SUKO  
United States District Judge